

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104, 15.106 and 15.295, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

The proposed amendments implement recent legislative changes as authorized in 2008 Iowa Acts, chapter 1173. The amendments update Iowa Code citations; add new definitions for "council," "grayfield site," "green development," "qualifying investment," "qualifying investor," "qualifying redevelopment project," and "sustainable design"; amend the definition of "brownfield site"; and describe the eligibility requirements and application procedures for the new redevelopment tax credits.

The Department will hold a public hearing to accept public comments on April 28, 2009, from 2 to 4:30 p.m. at the Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309. Written public comments will also be accepted until 4:30 p.m. on April 28, 2009. Interested persons may submit written comments to Matt Rasmussen, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4906; or E-mail matt.rasmussen@iowalifechanging.com.

These amendments are intended to implement Iowa Code sections 15.291 to 15.295.

The following amendments are proposed.

ITEM 1. Strike "78GA,ch1101" wherever it appears in **261—Chapter 65** and insert "15" in lieu thereof.

ITEM 2. Amend rule **261—65.2(15)**, introductory paragraph, as follows:

261—65.2(15) Definitions. ~~When As used in this chapter these rules,~~ unless the context otherwise requires, the definitions in Iowa Code section 15.292 shall apply to this chapter. The following definitions shall also apply:

ITEM 3. Amend rule **261—65.2(15)**, definition of "Brownfield site," as follows:

"*Brownfield site*" means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed ~~to be included~~ for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

ITEM 4. Adopt the following new definitions in rule **261—65.2(15)**:

"*Board*" means the Iowa economic development board pursuant to Iowa Code section 15.103.

"*Council*" means the brownfield redevelopment advisory council, as established in Iowa Code section 15.294.

"*Grayfield site*" means an industrial or commercial property meeting all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.

2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

“*Green development*” means development which meets or exceeds the sustainable design standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

“*Qualifying investment*” means the purchase price, cleanup cost(s), and redevelopment cost(s) directly related to a qualifying redevelopment project.

“*Qualifying investor*” means an applicant who has been accepted by the department to receive a redevelopment tax credit.

“*Qualifying redevelopment project*” means a brownfield or grayfield site being redeveloped or improved by the property owner. “Qualifying redevelopment project” does not include a previously remediated or redeveloped brownfield site.

“*Sustainable design*” means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

ITEM 5. Amend rule 261—65.3(15) as follows:

261—65.3(15) Eligible applicants. To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

65.3(1) Site owner. A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(2) Nonowner of site. A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(3) No change.

ITEM 6. Amend subrule 65.4(1) as follows:

65.4(1) Financial assistance. Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program established in ~~2000 Iowa Acts, chapter 1101~~ Iowa Code section 15.292.

ITEM 7. Amend rule 261—65.7(15) as follows:

261—65.7(15) Application contents.

65.7(1) ~~At~~ Every application for assistance shall include, but not be limited to, ~~the following information:~~ evidence of sponsorship. In addition, applications for assistance other than tax credits shall include the following information:

a. ~~1. A business plan, which includes a remediation plan.~~ The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. ~~2.~~ A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

~~3. Evidence of sponsorship.~~

65.7(2) The department shall accept applications and determine application eligibility. The council shall make application recommendations to the board. The board shall approve or deny applications.

65.7(3) Approved applicants shall enter into an agreement with the department. The agreement shall specify the maximum amount of tax credit available.

65.7(4) The department shall issue a tax credit certificate upon written notification of project completion.

ITEM 8. Adopt the following **new** rule 261—65.11(15):

261—65.11(15) Redevelopment tax credit.

65.11(1) Purpose. The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The department may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

65.11(2) Eligible applicant. An individual, partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual may claim a redevelopment tax credit. Once an applicant is deemed eligible, the applicant shall be considered a qualifying investor for a redevelopment tax credit. A city or county may not apply for a redevelopment tax credit.

65.11(3) Tax credit certificate.

a. Issuance. The department shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

b. Acceptance. The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project.

c. Transfer. Tax credit certificates issued under this rule may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.

d. Replacement certificate. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.

e. Claiming a transferred tax credit. A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

65.11(4) Amount of tax credit.

a. Pro rata share. The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

b. Percentage. The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).
- (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
- (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

c. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)“d.”

d. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the department shall not exceed \$1 million. The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.

65.11(5) Claiming a tax credit. The qualified investor must attach one or more tax credit certificate(s) to the qualified investor's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009. The tax credit certificate or certificates attached to the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.

65.11(6) Reduction of tax credit.

a. Taxes imposed under Iowa Code section 422.11V, less the credits allowed under Iowa Code sections 422.12, 422.33, 422.60, 432.12L, and moneys and credits imposed under Iowa Code section 533.329 shall be reduced by a redevelopment tax credit allowed under Iowa Code sections 15.291 to 15.294.

b. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this rule.

65.11(7) Project completion.

a. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, or after June 30, 2010, shall not qualify for a tax credit under this rule.

b. A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project.

c. Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

65.11(8) Tax credit carryover. If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the department may prorate the remaining credit amount among other eligible applicants.

65.11(9) Department registration and authorization. The department shall develop a system for registration and authorization of tax credits. The department shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

65.11(10) Other financial assistance considerations. If a qualified investor has also applied to the department, the board, or any other agency of state government for additional financial assistance, the department, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

ITEM 9. Adopt the following new rule 261—65.12(15):

261—65.12(15) Council approval and repayment requirements of redevelopment tax credit.

65.12(1) A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B shall apply to the council, as established in Iowa Code section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

65.12(2) A qualified investor shall provide the council with the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A.

ITEM 10. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement ~~2000 Iowa Acts, chapter 1104~~ Iowa Code sections 15.291 to 15.295.